

# Notice of Allowability

Application No.

10/764,191

Examiner

Eisa B. Elhilo

Applicant(s)

DUNBAR ET AL.

Art Unit

1751

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Appeal Brief filed on November 17, 2005.
2. ☒ The allowed claim(s) is/are 1,4-5,7,10-13 and 15-17.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 7/6/2005
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 12/20/2005
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

Eisa Elhilo  
Primary Examiner  
Art Unit 1751

12/21/05

### DETAILED ACTION

1 This action is responsive to the Appeal Brief filed on November 17, 2005.

### EXAMINER'S AMENDMENT

2 An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Michael J. Sambrook on December 20, 2005.

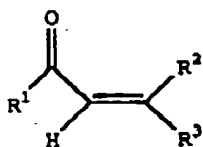
The application has been amended as follows:

#### **In the claims:**

Please replace claim 1 with the following claim -- A hair coloring composition comprising:

- (i) at least one developer of 2,6-dihalo-para-aminophenol and optionally at least one developer selected from aromatic systems capable of being oxidized and thereafter undergoing only a single electrophilic attack reaction;
- (ii) at least one developer of para-phenylenediamine and optionally at least one developer selected from aromatic systems capable of being oxidized and thereafter undergoing at least two electrophilic attack reactions and
- (iii) at least one coupler of 3-acetamidophenol and optionally at least one coupler selected from the group consisting of diketone compounds, pyrazole compounds and the compounds of the following formula;

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in which  $R_1$ ,  $R_2$  and  $R_3$  are, independently selected from, cycloalkyl, alkenyl, cycloalkenyl, aryl, alkaryl, aralkyl,  $-R'NHCOR$ ,  $-CONHR$ ,  $-R'CONHR$ ,  $-R'OH$ ,  $-R'SO_2R$ ,  $-R'SO_2NHR$ ,  $-R'OR$  or  $-COR$ , in any of which  $R$  is  $H$ , alkyl, cycloalkyl,

alkenyl, cycloalkenyl, aryl, alkaryl or aralkyl and  $R'$  is alkylene, alkenylene, cycloalkylene, cycloalkenylene, arylene, alkarylene or aralkylene, or substituted versions of any of these; or mixtures thereof.

Please cancel claims 2, 3, 6, 8-9 and 14.

In claim 4, in line 1, replace "A" with --The -- and replace "3" with --1--.

In claim 5, in line 1, replace "A" with --The--.

In claim 5, in line 2, replace "comprises at least one developer" with --further-- and delete "para- and".

In claim 5, in line 3, delete "ortho-disubstituted benzene compounds,".

In claim 7, in line 1, replace "A" with --The --.

In claim 10, in line 1, replace "A" with --The --.

In claim 10, in line 2, replace "comprises at least one compound" with --further--.

In claim 10, in line 3, replace "formula II" with --following formula;--.

In claim 10, delete the phrase " and compounds of the formula III".

In claim 10, delete the lower formula (formula III) and also delete all the lines under the formula (III).

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In claim 10, in line 3, under the upper formula (formula II) and after the letter "Z" replace ",", with ---.

In claim 11, in lines 1-2, replace "A" with --The -- and replace "comprises at least one coupler" with --further --.

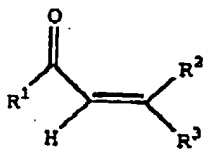
In claim 11, in line 2, replace "formula IV" with -- the following formula--

In claim 13, in line 1, replace "A" with --The --.

In claim 15, in line 1, after the term "(i)" insert -- at least one developer of 2,6-dihalo-para-aminophenol and optionally at least--.

In claim 15, in line 3, after the term "(ii)" insert -- at least one developer of para-phenylenediamine and optionally at least --.

In claim 15, in line 5, replace "one or more couplers" with -- at least one coupler of 3-acetamidophenol and optionally at least one coupler selected from the group consisting of diketone compounds, pyrazole compounds and the compounds of the following formula;



in which  $R_1$ ,  $R_2$  and  $R_3$  are, independently selected from, cycloalkyl, alkenyl, cycloalkenyl, aryl, alkaryl, aralkyl,  $-R'NHCOR$ ,  $-CONHR$ ,  $-R'CONHR$ ,  $-R'OH$ ,  $-R'SO_2R$ ,  $-R'SO_2NHR$ ,  $-R'OR$  or  $-COR$ , in any of which  $R$  is  $H$ , alkyl, cycloalkyl, alkenyl, cycloalkenyl, aryl, alkaryl or aralkyl and  $R'$  is alkylene, alkenylene, cycloalkylene, cycloalkenylene, arylene, alkarylene or aralkylene, or substituted versions of any of these; or mixtures thereof.

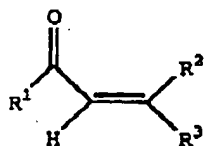
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In claim 16, in line 1, replace "A" with --The --.

In claim 17, in line 2 after the term (i), insert -- at least one developer of 2,6-dihalo-para-aminophenol and optionally at least--.

In claim 17, in line 4, after the term (ii), insert -- at least one developer of para-phenylenediamine and optionally at least --.

In claim 17, in line 6, replace "one or more couplers" with -- at least one coupler of 3-acetamidophenol and optionally at least one coupler selected from the group consisting of diketone compounds, pyrazole compounds and the compounds of the following formula;



in which  $R_1$ ,  $R_2$  and  $R_3$  are, independently selected from, cycloalkyl, alkenyl, cycloalkenyl, aryl, alkaryl, aralkyl,  $-R'NHCOR$ ,  $-CONHR$ ,  $-R'CONHR$ ,  $-R'OH$ ,  $-R'SO_2R$ ,  $-R'SO_2NHR$ ,  $-R'OR$  or  $-COR$ , in any of which  $R$  is  $H$ , alkyl, cycloalkyl,

alkenyl, cycloalkenyl, aryl, alkaryl or aralkyl and  $R'$  is alkylene, alkenylene, cycloalkylene, cycloalkenylene, arylene, alkarylene or aralkylene, or substituted versions of any of these; or mixtures thereof. — —

3 Claims 1, 4-5, 7, 10-13 and 15-17 are allowed.

#### STATEMENT OF REASONS FOR ALLOWANCE

4 The following is an examiner's statement of reasons for allowance:

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The closest prior art of record (WO 98/52519) does not teach or disclose a kit for coloring hair, a method for coloring hair or a hair coloring composition comprising at least one developer of 2,6-dihalo-para-aminophenol in a combination with at least one developer of para-phenylenediamine and a coupler of 3-acetoamidophenol as claimed. Further, the rejection over Pratt et al. (WO 98/52519) in view of Audousset et al. (US 5,578,087) has been rendered moot because the comparative data in Example 1 at page 11 of specification and which is commensurate in the scope with the amended claims, shows superior and unexpected results of root-to-tip evenness (2.65) over the prior art compositions 1 and 2 that show 6.70 and 5.00 root-to-tip evenness. Accordingly, the claimed subject matter as a whole would not have been obvious to one having ordinary skill in the art of hair coloring formulation.

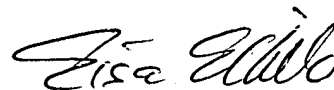
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

December 21, 2005